

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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SALVADOR RICO-RIVAS.

Petitioner,

Case No. 3:23-cv-00288-MMD-CLB

ORDER

v.

NETHANJAH BREITENBACH, et al.,

Respondents.

11 On September 26, 2023, this Court granted 28 U.S.C. § 2254 habeas corpus
12 petitioner Salvador Rico-Rivas' motion for counsel and appointed the Federal Public
13 Defender to represent him in this action. (ECF No. 7.) On October 26, 2023, Alicia R.
14 Intriago of the Federal Public Defender's Office appeared as counsel on behalf of Rico-
15 Rivas. (ECF No. 10.) The Court now sets a schedule for further proceedings in this action.

16 It is therefore ordered that counsel for Petitioner meet with Petitioner as soon as
17 reasonably possible, if counsel has not already done so, to: (a) review the procedures
18 applicable in cases under 28 U.S.C. § 2254; (b) discuss and explore with Petitioner, as
19 fully as possible, the potential grounds for habeas corpus relief in Petitioner's case; and
20 (c) advise Petitioner that all possible grounds for habeas corpus relief must be raised at
21 this time in this action and that the failure to do so will likely result in any omitted grounds
22 being barred from future review.

23 It is further ordered that Petitioner has 90 days from the date of this order to file
24 and serve on Respondents a second-amended petition for writ of habeas corpus.

25 It is further ordered that Respondents have 45 days after service of an amended
26 petition within which to answer, or otherwise respond to, the amended petition. Any
27 response filed should comply with the remaining provisions below, which are entered
28 pursuant to Habeas Rule 5.

1 It is further ordered that any procedural defenses raised by Respondents in this
2 case be raised together in a single consolidated motion to dismiss. In other words, the
3 Court does not wish to address any procedural defenses raised herein either in seriatum
4 fashion in multiple successive motions to dismiss or embedded in the answer. Procedural
5 defenses omitted from such motion to dismiss will be subject to potential waiver.
6 Respondents should not file a response in this case that consolidates their procedural
7 defenses, if any, with their response on the merits, except pursuant to 28 U.S.C. §
8 2254(b)(2) as to any unexhausted claims clearly lacking merit. If Respondents do seek
9 dismissal of unexhausted claims under § 2254(b)(2): (a) they should do so within the
10 single motion to dismiss not in the answer; and (b) they should specifically direct their
11 argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*,
12 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses, including
13 exhaustion, should be included with the merits in an answer. All procedural defenses,
14 including exhaustion, instead must be raised by motion to dismiss.

15 It is further ordered that, in any answer filed on the merits, Respondents must
16 specifically cite to and address the applicable state court written decision and state court
17 record materials, if any, regarding each claim within the response as to that claim.

18 It is further ordered that, when Respondents file an answer or other responsive
19 pleading, Petitioner will have 30 days after service of the answer or responsive pleading
20 to file and serve his response.

21 It is further ordered that any additional state court record exhibits filed herein by
22 either Petitioner or Respondents be filed with a separate index of exhibits identifying the
23 exhibits by number. The CM/ECF attachments that are filed also must be identified by the
24 number or numbers of the exhibits in the attachment. Each exhibit must be filed as a
25 separate attachment.

26 It is further ordered that, at this time, the parties send courtesy copies of any
27 responsive pleading and all indices of exhibits only to the Reno Division of this Court.
28 Courtesy copies are to be mailed to the Clerk of Court, 400 S. Virginia St., Reno, NV,

1 89501, and directed to the attention of "Staff Attorney" on the outside of the mailing
2 address label. No further courtesy copies are required unless and until requested by the
3 Court.

4 DATED THIS 30th day of October 2023.

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MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE